THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE S. ANANDA REDDY

W.P. No.19238 OF 2005

DATE: 31-08-2005

Between:

M/s. Arunachala Logistic (P) Limited,

Rep. by its Director, G. Subba Reddy,

8-3-961/B, 4th Floor, SBI Building,

Srinagar Colony Main Road,

Hyderabad – 500 073. .. Petitioner

AND

The Deputy Commercial Tax Officer,

Srinagar Colony Circle, Hyderabad

& another .. Respondents

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE S. ANANDA REDDY

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W.P. No.19238 OF 2005

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ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

We have heard the learned counsel for the petitioner and the Special Standing Counsel for the Department and at their request the matter is taken up for final disposal at the admission stage.

Rule nisi.

The petitioner is registered under the provisions of the A.P. Tax on Professions, Trades, Callings and Employments Act, 1987 (for short 'the Act') on the rolls of the Deputy Commercial Tax Officer, Srinagar Colony, Hyderabad.

The assessing authority having finalized the assessment of profession tax for the year 2001-02, passed the orders, dated

31-03-2005, requiring the petitioner to pay the profession tax at Rs.750/- per annum on each of the vehicle numbering 88 owned by the petitioner. The authority accordingly required the petitioner to pay the profession tax at the rate of Rs.750/- per vehicle. The petitioner being aggrieved by the same, preferred revision under Section 16 of the Act challenging the correctness of the assessment order. The petitioner, *inter alia,* contended before the revisional authority that the assessing officer committed an error and imposed tax at the rate of Rs.750/- per vehicle, whereas the law requires and enables the authority to assess the tax payable by person and not on the vehicle.

We do not propose to express any opinion sofar as the contention raised by the petitioner before us as well as the revisional authority. The revisional authority disposed of the revision petition vide order, dated 17-08-2005, which

is impugned before us.

Sri P. Srinivas Reddy, learned counsel appearing for the petitioner, submits that the view taken by the revisional authority dismissing the revision petition filed by the petitioner herein suffers from incurable legal infirmities being contrary to Section 16 of the Act. We find substantial force in the submission made by the learned counsel for the petitioner. It is no doubt true, as has been observed by the revisional authority that an appeal under Section 15(1) of the Act lies to the appellate authority against any order passed by any authority under the provisions of the Act not being an order passed under sub-section (3) of Section 8 of the Act within 30 days from the date on which the order was served on him. Admittedly, the impugned order is not the one passed under sub-section (3) of Section 8 of the Act, therefore an appeal may lie against the impugned order, but it is required to notice that Section 16 of the Act which confers jurisdiction upon the Commissioner either *suo motu* or on an application made to him, call for and examine the record of the assessing authority, as the case may be, of the appellate authority in respect of any proceeding to satisfy himself as to the regularity of any such proceeding or the correctness, legality or propriety of any decision. That a plain reading of Section 16 of the Act disclose that a revision petition lies even as against the order passed by the assessing authority.

It was open to the petitioner either to prefer an appeal or revision before the revisional authority. The petitioner had chosen to prefer revision instead of appeal, which ought to have been considered on its own merits, but the revisional authority dismissed the revision petition preferred by the petitioner on the ground of availability of alternative remedy.

We find it difficult to sustain the order which is contrary to section 16 of the Act which provides for filing of revision petition even against the order of the assessing authority.

In such view of the matter, we hold that the revisional authority is bound to decide the revision on merits.

For the aforesaid reasons, the impugned order is set aside. The revision petition filed by the petitioner shall revive to its file for its hearing and disposal on merits, in accordance with law by the revisional authority.

The revision petition shall be disposed of as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. There shall be an order accordingly.

It is needless to direct that pending the revision petition, no coercive steps as against the petitioner shall be taken.

The Writ Petition is accordingly allowed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:31-08-2005.

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S. ANANDA REDDY, J

NOTE:

Furnish C.C. of the order within 3 days.

(B/O)

PV